Supreme Court, U.S.
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No. 85-418

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

SARA CRAWFORD, Special Administrator of the Estates of SCOTT W. PAWLISA, Deceased and BRIAN PAWLISA, Deceased, as Administrator,

Petitioner,

vs.

JERRY EDMONSON, Individually and as a Police Officer of the City of Centralia; KERMIT JUSTICE, Individually and as Chief of Police of the City of Centralia; and CITY OF CENTRALIA, a Municipal Corporation,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did the trial court abuse its discretion by admitting evidence of certain prior criminal acts alleged to have been committed by Petitioner's decedents, Brian Pawlisa and Scott Pawlisa?

2. Did the trial court abuse its discretion in admitting evidence that corroborated Respondent Edmonson's state of mind?

3. Did the trial court abuse its discretion by permitting the testimony of Cheryl Sprehe concerning the details of the armed robbery committed by decedents immediately prior to their respective deaths?

4. Did the trial court err in denying Petitioner's motion for a directed verdict on the issue of liability against Respondent Edmonson as to decedent Scott Pawlisa?

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Respondents respectfully submit this Brief in Opposition to the Petition for Writ of Certiorari (hereinafter Petition) to the Court of Appeals for the Seventh Circuit.

OPINION OF THE COURTS BELOW

The District Court did not enter an opinion in this cause. The opinion of the Court of Appeals for the Seventh Circuit is published in the official reporter. *Crawford v. Edmonson, et al,* 764 F.2d 479 (7th Cir. 1985).

JURISDICTIONAL STATEMENT

In a trial before the Honorable William L. Beatty, United States District Judge, in the Southern District of Illinois, a jury returned a verdict in favor of all Respondents on June 14, 1984. The District Court entered judgment on the verdict. On July 20, 1984, the District Court denied Petitioner's motion for a new trial. Petitioner appealed the cause, and, on June 13, 1985, the Court of Appeals for the Seventh Circuit affirmed the judgment of the District Court. *Crawford v. Edmonson, et al,* 764 F.2d 479 (7th Cir. 1985). Jurisdiction lies in this Honorable Court pursuant to Title 28 United States Code, Section 1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES, AND FEDERAL RULES AT ISSUE

FIFTH AMENDMENT, UNITED STATES CONSTITUTION

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War of public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION, SECTION 1

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Title 42, United States Code, Section 1983

Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

FEDERAL RULES OF EVIDENCE

Rule 401. Definition of "Relevant Evidence"

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence

to the determination of the action more probable or less probable than it would be without the evidence.

Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion or Waste of Time

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

ILLINOIS REVISED STATUTES

Chapter 38, Section 5-2, When Accountability Exists

A person is legally accountable for the conduct of another when:

(a) Having a mental state described by the statute defining the offense, he causes another to perform the conduct, and the other person in fact or by reason of legal incapacity lacks such a mental state; or

(b) The statute defining the offense makes him so accountable; or

(c) Either before or during the commision of an offense, and with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense. However, a person is not so accountable, unless the statute defining the offense provides otherwise, if:

(1) He is a victim of the offense committed; or

(2) The offense is so defined that his conduct was inevitably incident to its commission; or

(3) Before the commission of the offense, he terminates his effort to promote or facilitate such com-

mission, and does one of the following: wholly deprives his prior efforts of effectiveness in such commission, or gives timely warning to the proper law enforcement authorities, or otherwise makes proper effort to prevent the commission of the offense.

Chapter 38, Section 7-5(a)

(a) A peace officer, or any person whom he has summoned or directed to assist him, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to effect the arrest and of any force which he reasonably believes to be necessary to defend himself or another from bodily harm while making the arrest. However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent death or great bodily harm to himself or such other person, or when he reasonably believes both that:

(1) Such force is necessary to prevent the arrest from being defeated by resistance or escape; and

(2) The person to be arrested has committed or attempted a forcible felony or is attempting to escape by use of a deadly weapon, or otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay.

STATEMENT OF FACTS

On Friday night, December 21, 1979, Brian and Scott Pawlisa robbed a Long John Silver's Restaurant in Centralia, Illinois. The day before the robbery, an informant, Dr. Collins, told the Chief of Police of neighboring Central City that either or both of the Pawlisas would rob the restaurant on Friday or Saturday night and that the robbery would be an armed robbery. (R.213).

The Central City Chief of Police notified Respondent Kermit Justice, the Centralia Chief of Police, of this information. Respondent Justice arranged to stake out the restaurant. Respondent Edmonson was one of four other officers involved in the stake out that evening. (R.98)

Between 9:30 and 10:00 p.m., the officers observed a white Chevrolet slowly circling the restaurant. (R.134). Detective Simer, who had a pair of binoculars that evening, testified that he recognized one of the car's occupants as Brian Pawlisa, and he informed the other officers of that fact by police radio. (R.222, 239). Shortly after 10:00 p.m., police saw two of the occupants leaving the car immediately behind the restaurant, running across an open field, and hiding underneath a trailer in a private yard. (R.239). Twice, an employee of the restaurant emerged from the building, ostensibly to take out the trash, and talked with the suspects. The suspects thereafter ran from the trailer to a shed behind the restaurant. (R.139). Up to this point, Officers had not verified that the suspects possessed a gun, and all of the officers agreed that they had no probable cause to make an arrest. The suspects then emerged from the shed, wearing masks over their faces. (R.145). At this time, one was seen carrying a gun. Although probable cause was finally established at that point, the officers testified that they did not have enough time to get in position to make a safe arrest before the suspects ran along the side of the building and entered the restaurant through the front door. (R. 145, 146, 177, 178).

Cheryl Sprehe was working inside Long John Silver's as the crew leader. She testified that the two suspects entered with stocking masks over their heads, one armed with a gun. (R.304). They demanded money, and she gave it to them. She testified at trial that the gun was real, that the robbery was real, and that she was in fear for her life. (R.305).

The suspects emerged from the rear door of the restaurant. (R.288). By this time, the officers had taken up positions around the rear of the restaurant. All four officers were armed

with standard police shotguns and service revolvers. The suspects immedicately ran toward the open field behind the restaurant. Officers Edmonson, Simer, and Shaw called out "halt, police," but the suspects continued to run, the first carrying the gun. (R. 180, 289). Captain Edmonson fired a shot into the air, but the suspects continued to run. Again, the officers called out "halt, police," but were ignored. The first masked suspect started to turn, gun in hand, toward the position of Officer Shaw. At that time, Captain Edmonson fired twice at the first suspect, the first shot hitting both the suspects. (R.291). Five pellets of shot hit Scott Pawlisa, who died within an hour. Six pettets hit Brian Pawlisa, who died of his wounds approximately 20 hours later. All four officers testified that when Captain Edmonson fired the fatal shots, they were in fear for their lives. (R.182, 293). Detective Shaw had already attempted to fire, but his gun was apparently not loaded. Detective Simer and Captain Qualls both testified that they were about to fire and would have had Edmonson not fired. (R.293).

The decedents' mother, Petitioner Crawford, filed this cause of action as their special administrator in December 1981, alleging a violation of her sons' civil rights under Title 42, United States Code, Section 1983 and seeking recovery under the Illinois Wrongful Death and Survival Acts for the Respondents' negligence. The case was tried in November 1983, ending in a jury hung five to one in the Respondents' favor. When the case was retried in June 1984, Petitioner dropped the negligence claim and proceeded only on the civil rights claim. The defense argued, as it had in the first trial, that Captain Edmonson shot Brian and Scott Pawlisa in good faith and with legal justification based upon the Illinois Deadly Force Statute. Captain Edmonson knew both Brian Pawlisa and Scott Pawlisa before their deaths. Prior to trial, Petitioner presented a motion in limine to preclude evidence of other incidents of unlawful conduct by the decedents. The Court granted the motion in part and denied the motion in part, allowing in only evidence of those incidents involving guns.

The jury first learned about the decedents' prior activities with guns from Petitioner's counsel. In his opening statement, Petitioner's counsel discussed the cross burning incident, noting that the Pawlisas allegedly erected and burned a cross in the black community in Centralia and that guns were involved in the incident. (R.13). Petitioner's counsel then told the jury about testimony they would hear that the Pawlisas were present when Jimmy Collins, informant Dr. Collins' son, was shot in the leg. (R.13). Counsel proceeded to tell the jury they would hear testimony about the Pawlisas being suspects in an armed robbery at another fast-food restaurant in Centralia several months before, when a gun was fired. (R.14). Petitioner's direct examination of Chief Kermit Justice established the first evidence of the Pawlisas' criminal history and potential for violence. (R. 80-81). Petitioner's counsel questioned Captain Jerry Edmonson on direct examination about the cross-burning incident (R.124), the shooting of Jimmy Collins (R. 124), and the prior fast-food restaurant robbery. (R.125-129). During Respondent's examination, Captain Edmonson testified that he was aware of this information at the time of the Long John Silver's robbery. (R. 166, 171, 183).

JURISDICTION IN THE COURT OF FIRST INSTANCE

Jurisdiction in the cause laid in the United States District Court for the Southern District of Illinois, pursuant to Title 28, United States Code, Sections 1331 and 1343, and Title 42, United States Code, Sections 1983, 1985(2) and (3), 1986, and 1988. The appeal from the District Court properly laid in the United States Court of Appeals for the Seventh Circuit, pursuant to Title 28, United States Code, Section 1291.

ARGUMENT

I.

The Trial Court Did Not Abuse Its Discretion By Admitting Evidence Of Certain Prior Criminal Acts Alleged To Have Been Committed By Petitioner's Decedents, Brian Pawlisa And Scott Pawlisa.

II.

The Trial Court Did Not Abuse Its Discretion In Admitting Evidence That Corroborated Respondent Edmonson's State Of Mind.

Petitioner appeals the admission into evidence of testimony concerning three prior incidents in which Brian and Scott Pawlisa used firearms. The trial court denied Petitioner's motion in limine to keep out such testimony; paradoxically, the jury first heard of each of the incidents during Petitioner's opening statement and then again during Petitioner's direct examination of Captain Edmonson and Police Chief Justice. Petitioner also elicited testimony of the juveniles' violent past from their father, James Pawlisa. During Petitioner's direct examination of Chief Justice, Petitioner elicited the following testimony:

Q. Now Chief, did you believe Brian Pawlisa was a dangerous young man?

A. We had information to the effect that they had been involved in other things, weapons had been involved, yes, sir.

Q. Did you believe that he was a dangerous young man?

A. I believed that the information we had was correct, yes, sir.

Q. So you did believe that he was dangerous?

A. Well, anyone that has weapons and has a history of that, yes, sir, I would have to consider dangerous.

Q. And you also believed that his brother Scott was dangerous?

A. Again, they had the history of weapons, yes.

Q. And you believed that, and it was your opinion that those were boys who were violent criminal types, is that right?

A. Well, I don't know about the word violent, but they had potential, anyone that has weapons has potential of being violent.

Q. And do you recall in a previous deposition the question was asked, in your opinion were those boys violent criminal types and your answer was yes, sir?

A. That would be correct, that's my answer, yes.

Q. And is it also your opinion that these were two boys that would kill, is that right?

A. The potential is there, if they use weapons, yes.

Q. So you did believe that these were two boys that would kill?

A. If gotten in the right position, yes sir.

(R. 80-81)

Accordingly, any objection Petitioner may have had is now waived. *United States v. Johnson,* 720 F.2d 519 (8th Cir. 1983), *cert. denied,* ____ U.S. ____, 104 S.Ct. 1310, 79 L.Ed.2d 707 (1984).

Nevertheless, Respondents proceed to address the issues raised. At the outset, Respondents note that Petitioner's first and second questions for review must be considered together. Peti-

tioner's first question for review challenges generally the admission of the three prior incidents under Federal Rules of Evidence 401, 403, and 404[1]; Petitioner's second question for review specifically challenges the admission of the same testimony as improper to corroborate Respondent Edmonson's state of mind. Petitioner's bifurcated argument obscures the focal point of the analysis. Testimony concerning the three incidents was relevant, pursuant to Federal Rule of Evidence 401, and more probative than prejudicial, pursuant to Federal Rule of Evidence 403, precisely because it corroborated Respondent Edmonson's state of mind, which was a critical element of the defense. Thus, the first and second questions for review are inextricably connected.

There was in force in the State of Illinois at the time of the occurrence a statute providing that a police officer may use deadly force only when necessary to prevent death or great bodily harm to himself or another person, or when he reasonably believes both that such force is necessary to prevent an arrestee from escaping and that the arrestee has committed a forcible felony or is attempting to escape by using a deadly weapon, or when the felon indicates that he will endanger human life or inflict great bodily harm unless arrested without delay. *Illinois Revised Statutes,* Chapter 38, Section 7-5(a). At all times, Captain Edmonson's defense was that he was relying upon the Use of Force Statute in good faith. *See, Pierson v. Ray,* 386 U.S. 547, 87 S.Ct. 1213, 18 L.Ed.2d 288 (1967). This Honorable Court

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[1] Petitioner presents a contradictory argument: On the one hand, Petitioner argues that the prior incident testimony was inadmissable pursuant to Federal Rules of Evidence 401 and 403. On the other hand, Petitioner argues that the evidence was inadmissable because Federal Rule of Evidence 404 does not properly apply to civil proceedings. However, the evidence at issue was not offered under Federal Rule of Evidence 404. Thus, the applicability of Federal Rule of Evidence 404 in a civil proceeding is not properly before this Honorable Court. Moreover, federal courts commonly follow Federal Rules of Evidence 401 and 403 civil cases.

adverted to the constitutional validity of this Illinois statute in *Tennessee v. Garner,* ____ U.S. ____, 53 U.S.L.W. 4410, 4414 n. 18 (March 26, 1985). Indeed, the case at bar is identical to circumstances to which this Honorable Court therein referred with approval.

> Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given. (53 U.S.L.W., at 4412-13.)

Pursuant to Federal Rule of Evidence 403, the prior incident testimony was relevant to prove Respondent Edmonson's state of mind at the time of the robbery. *Nicholson v. Layton,* 747 F.2d 1225 (8th Cir. 1984); *MCI Communications Corporation v. American Telephone and Telegraph Company,* 708 F.2d 1081 (7th Cir. 1983), *cert. denied,* ____ U.S. ____, 104 S.Ct. 234 (1983); *Forro Precision, Inc. v. International Business Machines Corp.,* 673 F.2d 1045 (9th Cir. 1982); *Bowden v. McKenna,* 600 F.2d 282 (1st Cir. 1979).

When Captain Edmonson fired his shotgun, he reasonably believed such force was necessary to prevent great bodily injury to himself or others. To prove the reasonability of his belief, Respondents offered not only evidence of Edmonson's perceptions at the time he fired his shotgun, but also Edmonson's knowledge of the Pawlisas' prior criminal activities involving firearms. This evidence was certainly relevant in proving Edmonson reasonably believed that he and others might be shot by Brian Pawlisa as the juvenile turned, armed with a .44 caliber revolver.

Petitioner also argues in error that the prior incident testimony was more prejudicial than probative. Petitioner would have this Honorable Court believe that the evidence created a wrong impression about the Pawlisa brothers. Yet the crime they had just committed that night was certainly no less serious than the prior incidents. Indeed, Petitioner admits her sons committed the armed robbery that night. Federal Rule of Evidence 403 insulates not against evidence that is merely prejudicial but against evidence that is unfairly prejudicial. *Carter v. Hewitt,* 617 F.2d 961 (3d Cir. 1980). Evidence is unfairly prejudicial only if it has "an undue tendency to suggest decision on an improper basis, commonly though not necessarily, an emotional one." Advisory Committee Note, F.R. Evid. 403. Nowhere has Petitioner identified an undue inference from the testimony, for none exists. Although Captain Edmonson's testimony may not have been the best evidence of whether the incidents actually occurred, the issue was not whether the prior incidents actually occurred but the extent of Captain Edmonson's knowledge at the time he shot the Pawlisas.

Petitioner attempts to raise the issue of Captain Edmonson's identification of Brian Pawlisa into a question of constitutional magnitude. Evidence adduced at trial established that, when the two juveniles got out of the white Chevrolet, Officer Simer announced on the police radio that one of the two youths was Brian Pawlisa. Captain Edmonson heard Officer Simer broadcast this information and maintained visual surveillance of the two youths. As the masked juveniles ran from the restaurant, Captain Edmonson knew that one of the two was Brian Pawlisa. In any event, the adequacy and reasonability of identification was a question for the jury to weigh.

Although Petitioner asserts in her Petition at page 8 that the prior incident testimony "did not prove that Edmonson's 'perception of fear was legitimate,' " the triers of fact decided to the contrary. Likewise, Petitioner's arguments that the Pawlisas were never charged in either the Jimmy Collins

shooting or the cross-burning incident and that Respondents did not prove the reliability of their informants were questions of weight, not admissibility, proper for the triers of fact to consider. It was for the jury to weigh whether Edmonson's knowledge was based on nothing more than uncorroborated hearsay. Throughout her Petition, Petitioner obscures the legal difference between questions of admitting and of weighing the evidence. It is this confusion upon which Petitioner requests this Honorable Court for certiorari. Once the threshold of relevance is satisfied, the matter falls within the discretion of the trial court. *See, Hamling v. United States,* 418 U.S. 87, 94 S.Ct. 2887, 41 L.Ed.2d 590 (1974). A reviewing court accords great deference to the trial court's decision. *U.S. v. Peltier,* 585 F.2d 314 (8th Cir. 1979), *cert. denied,* 440 U.S. 945, 99 S.Ct. 1422, 59 L.Ed.2d 634 (1979).

Petitioner does not present a case meriting this Honorable Court's review on writ of certiorari. Supreme Court Rule 17.1 governs the standards for granting a writ of certiorari. Petitioner does not present a decision made by the trial court or by the Court of Appeals for the Seventh Circuit conflicting with other courts of appeals. Sup. Ct. R. 17.1(a). Petitioner also fails to set forth any instance where the Court of Appeals for the Seventh Circuit has decided on important questions of federal law which has not been, but should be, settled by this Honorable Court or has decided a federal question in a way conflicting with applicable decisions of this Honorable Court. Sup.Ct.R. 17.1(c). Therefore, Respondents respectfully submit that the grant of the petition for writ of certiorari would be improvident.

III.

The Trial Court Did Not Abuse Its Discretion By Permitting The Testimony Of Cheryl Sprehe Concerning The Details Of The Armed Robbery Committed By Decedents Immediately Prior To Their Respective Death.

Respondents offered the testimony of Cheryl Sprehe to corroborate the reasonability of Captain Edmonson's perception of a threat from the decedents, one of whom was armed with a .44 caliber revolver. She testified very briefly that the suspects held a gun to her head and demanded money, that she was in fear for her life, and the suspects were serious. Although Petitioner claims in her petition at page 14 that "it is trial counsel's very clear recollection that her testimony was emotional (sic) and she was on the verge of violating the Court's admonition," the record does not confirm this unsubstantiated accusation. Indeed, the trial court made every attempt to ensure that Mrs. Sprehe's testimony would not be unfairly prejudicial. The court ruled before trial that testimony as to her pregnancy, being on the floor, having a gun held to her head, and being bound with tape would not be allowed. The court also very carefully cautioned Respondents' counsel about eliciting emotional testimony.

The restaurant clerk's testimony not only corroborated the reasonability of Captain Edmonson's state of mind, but also buttressed Respondents' position by demonstrating the Pawlisas' motive to resist arrest. Therefore, Cheryl Sprehe's testimony was certainly relevant. *Binks Mfg. Co. v. Nat. Presto Industries, Inc.*, 709 F.2d 1109 (7th Cir. 1983); *Bowden v. McKenna, supra.* Great deference is due the trial court concerning its admission of this testimony. *U.S. v. Peltier, supra.* Respondents respectfully submit that Petitioner fails to set forth an issue meriting review on writ of certiorari pursuant to Sup. Ct. R. 17.1(a) or (c).

IV.

The Trial Court Did Not Err In Denying Petitioner's Motion For A Directed Verdict On The Issue Of Liability Against Respondent Edmonson As To Decedent Scott Pawlisa.

Petitioner avers that Captain Edmonson negligently deprived Scott Pawlisa of his constitutional rights by accidentally shooting him at the same time he shot Brian Pawlisa. The underlying premise of this claim is that simple negligence establishes a constitutionally cognizable tort. Although *Parratt v. Taylor,* 451 U.S. 527 (1981), does not impose an independent state of mind requirement, the Eighth Amendment, *Estelle v. Gamble,* 429 U.S. 97 (1976), and the Fourteenth Amendment, *Village of Arlington Heights v. Metropolitan Housing Development Corp.,* 429 U.S. 252 (1977), both require something more than simple negligence. Petitioner alleged violations of both the Fifth Amendment and Eighth Amendment as incorporated to the States through the Fourteenth Amendment. Petitioner's argument might possess some credence if the court had directed a verdict for Captain Edmonson; however, the trial court below submitted the question of liability to the jury, which found in Captain Edmonson's favor. Moreover, even if simple negligence were sufficient to prove a constitutional violation, the trial court properly submitted the case to the jury to determine whether Respondents were negligent, in fact.

The standard of reviewing a trial court's denial of a motion for directed verdict is whether, viewing all of the evidence in the light most favorable to the *Respondents,* there was sufficient evidence to warrant submitting to the jury the question of whether Captain Edmonson acted as a reasonably prudent person would have acted under similar circumstances. *Hannigan v. Sears, Roebuck & Co.,* 410 F.2d 285 (7th Cir. 1969), *cert. denied,* 396 U.S. 902 (1969). As the Court of Appeals for the Seventh Circuit stated in its opinion:

> The mere fact that Captain Edmonson did not intend to shoot Scott Pawlisa does not conclusively establish that he acted unreasonably or negligently under the circumstances of that evening. Whether it is negligent for someone to shoot at one person and accidentally hit another standing nearby depends on many factors, as this case well illustrates. (*Crawford v. Edmonson,* 764 F.2d 479, 487 (7th Cir. 1985).)

Furthermore, Petitioner does not dispute that Scott Pawlisa was guilty of armed robbery, even though he was not carrying a gun. *Illinois Revised Statutes,* Chapter 38, Section 5-2(c). The officers testified to the warning given and the dangers extant at the time of the shooting. It was the province of the jury to weigh this testimony and to determine whether Captain Edmonson's conduct violated Scott Pawlisa's constitutional rights. The trial court did not err in submitting this question to the jury. Respondents respectfully submit that this issue does not merit review pursuant to Sup. Ct. R. 17.1 (a) or (c).

CONCLUSION

The Court of Appeals for the Seventh Circuit has not rendered an opinion in conflict with opinions of other courts of appeal or of this Honorable Court. The issues Petitioner raises do not involve important questions of federal law; rather, Petitioner's arguments are merely disagreements with the trier of facts' weighing of the evidence.

Therefore, Respondents respectfully request that the petition for writ of certiorari be denied.

Respectfully submitted,

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APPENDIX

APPENDIX A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

No. 81-5355

Sara Crawford, Special
Administrator
Plaintiff

v.

Jerry Edmonson, et al.
Defendant

ORDER

(Filed - July 20, 1984)

THIS MATTER comes on for hearing this 20th day of July 1984, on Plaintiffs MOTION FOR NEW TRIAL, and the Court having heard arguments of counsel.

IT IS ORDERED that plaintiffs motion for a new trial is DENIED.

Date: July 20, 1984

/s/ W. J. Beatty
Judge

JUDGMENT IN A CIVIL CASE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

No. 81-5355

Crawford, Sara L. Special
Administrator of the Estates of
Scott W. and Brian Pawlisa

v.

Edmonson, Jerry and Justice, Kermit

William L. Beatty, Judge

x **Jury Verdict.** This action came before the Court and a jury with the judicial officer named above presiding. The issues have been tried and the jury has rendered its verdict.

__ **Decision by Court.** This action came to trial or hearing before the Court with the judge (magistrate) named above presiding. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

that judgment is entered in favor of the Defendants, Jerry Edmonson and Kermit Justice, and against the Plaintiff, Sara L. Crawford.

Filed June 14, 1984

A. Marvin Helart
Clerk U.S. District Court
Southern District of Illinois
Alton Office